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April 19, 2004

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Representative John D. Dingell
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House Energy and Commerce Committee
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Dear Committee Chairs and Ranking Members:

We, the undersigned Attorneys General, understand that the Department of Defense (DOD) has proposed draft legislation to provide it certain exemptions from the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Clean Air Act, claiming that these exemptions are necessary in order to maintain military readiness. We strongly support maintaining military readiness. Clearly, the men and women of the armed forces must receive all appropriate training to prepare them to perform their duties. However, we do not believe that DOD has shown that these laws are likely to impact readiness, or that the existing exemption process in these laws is inadequate to address any conflicts that might

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arise. As the chief enforcers of our respective environmental laws, we think that these amendments would significantly impair our ability to protect the health of our citizens and their environment. We urge you to oppose these amendments.

Last year, EPA Administrator Christine Whitman testified that she was not aware of any training mission anywhere in the country that was being held up or not taking place because of RCRA, CERCLA or the Clean Air Act. On March 7, 2003, Deputy Secretary of Defense Wolfowitz issued a memorandum to the military service Secretaries regarding DOD compliance with ten different environmental and natural resource laws. He stated "[i]n the vast majority of cases, we have demonstrated that we are able both to comply with environmental requirements and to conduct necessary military training and testing." In light of this, the Deputy Secretary directed the Secretaries to give greater consideration to using the existing exemption processes in these environmental and natural resource laws in the "exceptional cases" that may present conflicts. To date, no exemptions have been invoked.

In December of last year, staff from our offices met with several representatives from DOD and the military services to discuss DOD's concerns with these three laws. When asked whether there had been any conflicts between RCRA, CERCLA, or the Clean Air Act and military readiness, DOD representatives acknowledged that there have not been any such instances, and specifically acknowledged that states could exercise their remedial authorities in a manner that did not impact readiness. Ultimately, one DOD representative stated that preempting state authorities was "not a matter of readiness, but of control."

DOD has shared with states and others a revised version of its proposed amendments (dated December 4, 2003). Notwithstanding the absence of any actual impacts to readiness, DOD's proposed amendments are still quite broad. Even when read in the narrowest possible fashion, the amendments to RCRA and CERCLA could preempt state and EPA authority over virtually all munitions-related contamination at over 24 million acres of operational ranges -- an area equivalent to Maryland, Massachusetts, New Jersey, Hawaii, Connecticut and Rhode Island combined. States and EPA would be prevented from requiring DOD to investigate or clean up groundwater plumes or sources of contamination on these lands, even if the contamination had migrated off-range and posed an imminent and substantial endangerment to human health.

DOD has argued that its ranges have been set aside for military purposes, and that the states have no legitimate interest in preventing or addressing environmental contamination on these lands, unless the contamination migrates off-range. We disagree with the premise that States have no interest in environmental contamination within the boundaries of military ranges. This premise is contrary to over three decades of federal legislative policy. States are the primary implementers under the Clean Air Act and RCRA, to which federal agencies and federal lands have been subject since 1970 and 1976, respectively. Moreover, Congress has amended RCRA, CERCLA and the Clean Air Act to clarify and strengthen state authority over federal agencies and federal lands.

The authority to require cleanup of environmental contamination within their boundaries, including contamination on military ranges, is a matter of States' rights. Some military ranges are on state-owned land that has been leased to DOD, and in many States, groundwater belongs to the State, so there are many cases where the State clearly has an ownership interest to protect. Regardless of whether the State owns the groundwater, water resources are scarce, particularly in the West, and

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particularly in times of drought, such as today. To protect the health of their citizens and the welfare of their economies, all States have a responsibility to protect their current and potential water supplies for safe and productive use. Many of DOD's operational ranges are quite large -- some are hundreds of square miles. Because our understanding of any subsurface environment is limited, at best, allowing groundwater plumes to spread for long distances substantially increases the risk of unanticipated exposures to contamination. Allowing groundwater contamination to spread to the borders of DOD's ranges will also increase the ultimate cost of cleaning up this contamination. DOD's proposal would potentially turn its ranges, and the groundwater under them, into national sacrifice zones.

Little is known regarding the adverse environmental consequences of munitions-related contamination. However, there is increasing evidence that military training and testing activities can lead to groundwater contamination by toxic munitions constituents such as perchlorate, TNT, RDX and HMX. Nationwide, there are at least 40 DOD facilities with known perchlorate contamination of ground or surface water. Perchlorate contamination of groundwater at operational ranges on the Massachusetts Military Reservation and Aberdeen Proving Grounds in Maryland has caused closure of municipal drinking water supply wells. It is possible that other ranges may pose threats to drinking or agricultural water supplies.

We think that it is extremely unlikely there would be significant conflicts between military training activities and potential CERCLA or RCRA investigation and cleanup requirements. There is substantial inherent flexibility in most environmental regulatory programs. This is especially true in investigating and cleaning up contamination sites under both RCRA and CERCLA. There are a variety of approaches to investigating and cleaning up contamination, and cleanup strategies are invariably site-specific. States and EPA have utilized this flexibility in responsibly regulating many activities bearing on national security at DOD and Department of Energy facilities under RCRA for decades now. State and EPA regulators have demonstrated their consistent willingness to resolve differences with regulated federal officials, and to develop creative approaches that balance defense concerns with environmental protection. For example, the Colorado Department of Public Health and Environment worked with range officials at Ft. Carson to install groundwater monitoring wells on an active range without impacting any training activities. The wells were installed on a day when the range was not in use, and the State adjusted the normal sampling period to coincide with range use schedules.

If there were a case where state or EPA regulators believed that environmental contamination at an operational range required remediation to protect human health and the environment, and adverse impacts on readiness could not be avoided, RCRA and CERCLA already allow DOD to seek an exemption from such requirements on the basis of national security. The Clean Air Act is even more flexible, allowing the President to exempt entire classes of activities. And EPA's Clean Air Act regulations provide further exemptions at the administrative level, without invoking a Presidential exemption.

Finally, we understand from DOD that once again it proposes to use the Defense Authorization Act as a vehicle for these amendments. We believe that amendments affecting state authority over the environmental activities of federal agencies should only be considered for adoption through the committees of jurisdiction. The environmental laws involve complex issues, as does the state regulation of federal agencies. Full and open hearings before these committees allow states and other affected parties to express their views, and the committees' expertise helps to ensure that any legislation that may be adopted reflects Congress's actual intent.

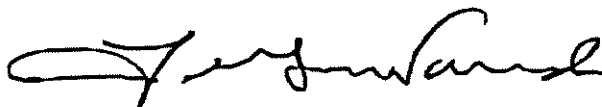
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Given that RCRA, CERCLA and the Clean Air Act have not adversely impacted readiness to date, and given the inherent flexibility of these laws, we do not think that DOD's proposed amendments are necessary. Further, they would impair state and EPA authority to protect human health and the environment. We urge you to deny DOD's proposal to amend these laws. Thank you for your consideration.

Sincerely,



Ken Salazar
Attorney General of Colorado



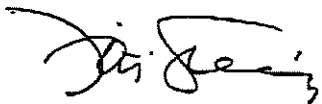
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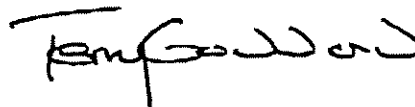
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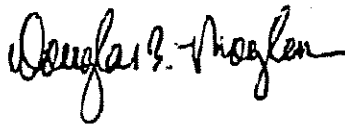
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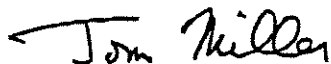
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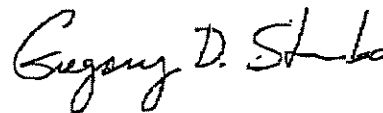
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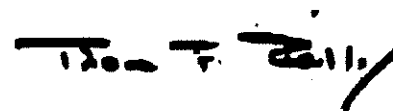
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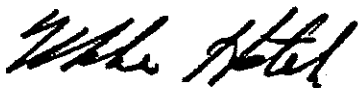
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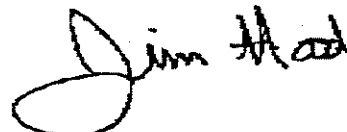
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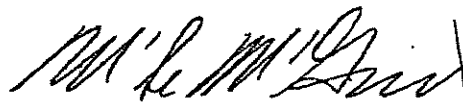
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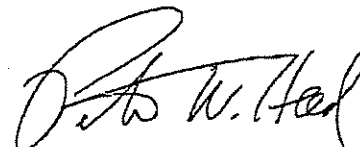
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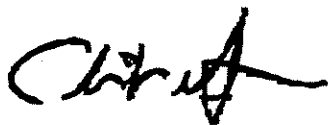
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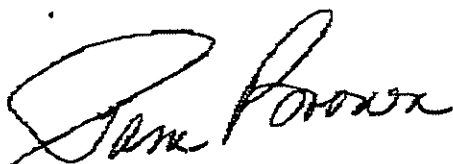
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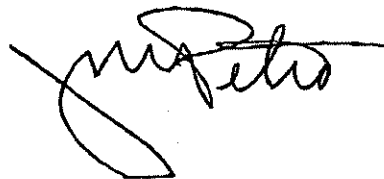
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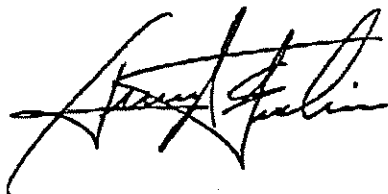
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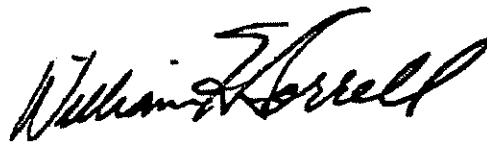
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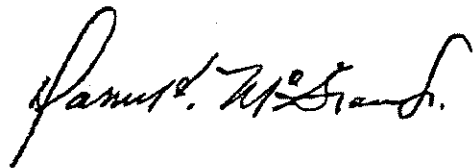
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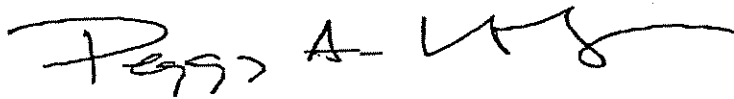
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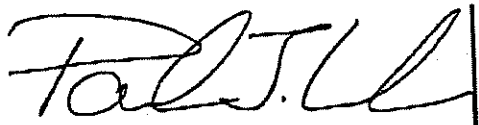
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